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Earlier this year saw the introduction of the Modern Slavery Act 2015 (“MSA”) which consolidates previous law in relation to trafficking and slavery under the offences of slavery, servitude, forced or compulsory labour and human trafficking. The MSA provides the courts of England and Wales with new powers to protect victims, increases the maximum custodial sentence from 14 years to life, creates the new post of Anti-slavery Commissioner and ensures victims receive compensation.

As part of their plans to prevent modern slavery the government introduced the requirement of transparency in supply chains under section 54 of the MSA. This provision, which came into force on 29 October 2015, imposes an obligation on all commercial organisations, carrying on a business or part of a business in the UK, to prepare a slavery and human trafficking statement for each financial year of the organisation. An organisation is a ‘commercial organisation’ within the meaning of the MSA if it supplies goods and services and has a total turnover of not less than £36 million. This total turnover comprises the global turnover of the organisation and its subsidiary undertakings derived from the provision of goods and services carried out in the ordinary course of the commercial organisation (after the deduction of trade discounts, VAT and other taxes).

So what does this actually mean?

In reality this means that all commercial organisations satisfying the above criterion, including universities, must complete a slavery and human trafficking statement for each financial year ending on or after the 31 March 2016, setting out either (a) the steps taken by the organisation during the financial year to ensure that slavery and human trafficking is not taking place within its supply chain and any part of its own business or (b) simply that no such steps have been taken by the organisation in relation to slavery and human trafficking.

Currently there is no obligation imposed through the MSA requiring commercial organisations to introduce/have in place internal policies ensuring their establishments and anyone forming part of their ‘supply chain’ are not involved in any activities that would be an offence under the MSA.. So whilst it could be argued that it is enough for universities to simply issue a slavery and human trafficking statement stating that no steps have been taken, this is not what the government envisioned when this obligation was created, nor would it be the advisable solution in relation to internal policies in this area. This is merely a starting point. We would suggest that you start with a statement that you build into your contracts, together with an anti-slavery policy available on your website and with copies provided to all your collaborative partners and suppliers.

The statutory guidance (“Transparency in Supply Chains etc. A Practical Guide) issued by the Home Office states that the section 54 provision “seeks to create a race to the top” through encouraging businesses to be transparent about that they are doing. This, it is said, will increase competition to drive up standards.

Universities, and other commercial organisations, will also have to consider the reputational damage which could be caused if they (1) are seen not to be doing anything to ensure their organisation and wider supply chains are not committing an offence under the MSA and (2), more importantly, if associated with slavery or human trafficking activity within their organisation, their wider supply chain and in their collaborative partnerships. As Theresa May says in the introduction to the guidance document: “it is simply not acceptable for any organisation to say, in the twenty-first century, that they did not know. It is not acceptable for organisations to ignore the issue because it is difficult or complex. And, it is certainly not acceptable for organisations to put profit above the welfare and wellbeing of its employees and those working on its behalf.”

So the Home Secretary has made the government’s position clear and laid down the gauntlet. As a responsible university that has worked hard to build up its reputation, remember that your agents act in the university’s name and their acts can damage your reputation. Savvy students will also want to see the university’s stance on these matters.

The conclusion is clear: to protect your reputation, start now. Build questions into your due diligence exercise with potential agents, collaborative partners and suppliers. It is better to act now, so that when the government decides to look more closely, increasing the obligations and penalties for failure to act and/or involvement in MSA offences, you will be ready. Universities took this on board with the Bribery Act, so why not do so with the Modern Slavery Act? That way you will take it in your stride and hopefully “race to the top” in a controlled and planned way.

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